

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

FILED
JAN 13 2025

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Caleb L. McGillvary
PLAINTIFF

V.

Dan Hagan
DEFENDANT

)
) CIVIL ACTION NO.
) 3:22-cv-07702-RFL
) Hon. Rita F. Lin, U.S.D.J.
) MOTION DATE:
) To be determined by the Court
) (Plaintiff has not been provided
) with Court's motion schedule)
)

NOTICE OF MOTION FOR EXTENSION OF TIME
FOR SERVICE UNDER RULE 4(m)

TO: CLERK, ALL CAPTIONED PARTIES

Please take notice that, on a date and time to be determined by the Court, Plaintiff Caleb L. McGillvary ("Plaintiff"); hereby moves the Court for an order granting an extension of time for service of process under Rule 4(m)

As grounds for this motion, Plaintiff relies upon his attached motion and declaration.

A proposed form of order is also attached.

Date: 12/24/24

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Caleb L. McGillvary)	CIVIL ACTION NO.
PLAINTIFF)	3:22-cv-07702-RFL
)	Hon. Rita F. Lin, U.S.D.J.
V.)	MOTION DATE:
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Dan Hagan)	(Plaintiff has not been provided
DEFENDANT)	with Court's motion schedule)
)	

DECLARATION IN SUPPORT OF MOTION FOR EXTENSION OF TIME
FOR SERVICE UNDER RULE 4(m)

I, Caleb L. McGillvary, hereby declare pursuant to 28 U.S.C.
1746 the following:

1.) I am the pro se plaintiff in the above-captioned
matter.

2.) I have been granted leave to proceed in forma
pauperis, and have duly requested the Court to order that
process be served by the Clerk and the US Marshal at public
expense pursuant to 28 USC 1915(d).

3.) The Court has issued an order directing the US
Marshal to serve process upon Defendant Dan Hagan

("Defendant") in this matter. In this order, the Court directed me to send USM-285 forms to the clerk, which I did.

4.) The Court ordered me to file a response to its request to provide updated information for Defendant. In response to the Court's order, I filed a response with all of Defendant's listed addresses, as well as a motion for alternative methods of service if the Marshal was not able to locate Defendant at any of those addresses.

5.) As of today's date, service has not been effected despite my due diligence in effecting service. The motion pending at ECF 34, likewise, has not yet been resolved.


6.) I have acted with diligence in effecting service, which included asking numerous friends to help me scour the internet and private investigation databases for addresses at which to serve process upon the Defendant; and filling out and submitting to the Clerk completed summons and USM-285 forms for the Defendant. I have acted with good faith and diligent effort to effect service upon Defendant.

7.) For all the foregoing reasons, and for all the reasons in my attached motion, I request in good faith that the Court should grant my motion for extension of time for service under Rule 4(m).

I declare under penalty of perjury that the foregoing statements are true and accurate.

Executed this 21 day of DECEMBER, 2024

Date: 12/21/24


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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Caleb L. McGillvary)	
PLAINTIFF)	CIVIL ACTION NO.
)	3:22-cv-07702-RFL
V.)	Hon. Rita F. Lin, U.S.D.J.
)	MOTION DATE:
)	To be determined by the Court
Dan Hagan)	(Plaintiff has not been provided
DEFENDANT)	with Court's motion schedule)
)	

**MOTION FOR EXTENSION OF TIME
FOR SERVICE UNDER RULE 4(m)**

Caleb L. McGillvary ("Plaintiff"), hereby moves the Court for an order granting extension of time for service under Fed R. Civ. P. 4(m).

As grounds for this request, Plaintiff relies upon 28 U.S.C. 1915(d), which commands that the U.S. Marshal shall serve process on defendants in actions wherein the Plaintiff has been granted leave to proceed in forma pauperis, ("IFP"). See Also Rule 4(c)(3).

Additionally, Plaintiff incorporates by reference his Declaration in support of this motion, and avers that it shows the following:

1.) I am the pro se plaintiff in the above-captioned

matter.

2.) I have been granted leave to proceed in forma pauperis, and have duly requested the Court to order that process be served by the Clerk and the US Marshal at public expense pursuant to 28 USC 1915(d).

3.) The Court has issued an order directing the US Marshal to serve process upon Defendant Dan Hagan ("Defendant") in this matter. In this order, the Court directed me to send USM-285 forms to the clerk, which I did.

4.) The Court ordered me to file a response to its request to provide updated information for Defendant. In response to the Court's order, I filed a response with all of Defendant's listed addresses, as well as a motion for alternative methods of service if the Marshal was not able to locate Defendant at any of those addresses.

5.) As of today's date, service has not been effected despite my due diligence in effecting service. The motion pending at ECF 34, likewise, has not yet been resolved.

6.) I have acted with diligence in effecting service, which included asking numerous friends to help me scour the internet and private investigation databases for addresses at which to serve process upon the Defendant; and filling out and submitting to the Clerk completed summons and USM-285 forms for the Defendant. I have acted with good faith and diligent effort to effect service upon Defendant.

This motion is now before the Court.

Legal Argument

POINT I: THE COURT HAS ORDERED THE CLERK AND US MARSHAL TO EFFECT SERVICE UPON DEFENDANTS PURSUANT TO 28 U.S.C. 1915, AND PLAINTIFF HAS ACTED WITH DUE DILIGENCE AND GOOD FAITH IN COOPERATING WITH THE US MARSHAL AND PROVIDING EVERYTHING NECESSARY TO EFFECT SERVICE

The Court has already ordered that Plaintiff may proceed in forma pauperis; and that the US Marshal must serve process upon Defendants. Plaintiff has filled out the USM-285 forms in the manner required by the Court and by the US Marshal, and has provided the forms as well as the summons, to the Clerk for forwarding to the US Marshal. Plaintiff has therefore complied with all procedural requirements for effecting service Pursuant to the Court's Order and 28 U.S.C. 1915(d). Plaintiff has also acted with diligence in filing a motion for alternative methods of service under Fed. R. Civ. P. 4(e)(1) and Cal. Code Civ. Proc. 415.10-415.95.

Notwithstanding all of the above, service has not yet been effected on Defendant, through no fault of Plaintiff's. An extension is therefore necessary.

Conclusion

Plaintiff was granted IFP status by order of the Court. 28 U.S.C. 1915(d) requires the U.S. Marshal to effect service in cases where a pro se plaintiff is granted IFP status. Plaintiff dutifully complied with all procedural requirements, but service has not yet been perfected. For these reasons, Plaintiff respectfully asks the Court to grant his motion for an order granting extension of time for service under Rule 4(m).

Respectfully Submitted,

Date:

12/24/24



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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Caleb L. McGillvary)	CIVIL ACTION NO.
PLAINTIFF)	3:22-cv-07702-RFL
)	Hon. Rita F. Lin, U.S.D.J.
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Dan Hagan)	(Plaintiff has not been provided
DEFENDANT)	with Court's motion schedule)
)	

ORDER

THIS MATTER having been opened to the Court on motion by Plaintiff Caleb L. McGillvary for an order granting extension of time for service under Rule 4(m) in this proceeding, and the Court having considered the papers submitted and the arguments therein, and FOR GOOD CAUSE SHOWN

It is on this ____ Day of _____, 20__

ORDERED that Plaintiff's motion is hereby GRANTED; and it is further

ORDERED that the time for service of process be extended for an additional 60 days after disposition of Plaintiff's pending service motion; and it is further

ORDERED that a copy of this order be served upon all parties appearing in this matter within 7 days of this order

Hon. Rita F. Lin, U.S.D.J.

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

DECEMBER 24, 20 24

Clerk, US Dist. Ct. - NDCA
US Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102-3489

RE: McGillvary v. Hagan
Civil Action No. 3:22-cv-07702-RFL
Hon. Rita F. Lin

Dear Clerk;

Please find enclosed and file onto the docket my notice, motion, proposed order, and declaration in support of my motion for extension of time for service pursuant to Rule 4(m); with my proof of service thereof; in the above-captioned matter.

Kind Regards,


Caleb L. McGillvary
In Propria Persona

ENCL:
CC: FILE

PROOF OF SERVICE


I, Caleb L. McGillvary, declare pursuant to 28 U.S.C. 1746 that on today's date, I placed in the institutional mailing system here where I'm incarcerated at NJ State Prison 3rd & Federal Streets Trenton, NJ 08625; with First Class Postage prepaid to be sent via USPS Mail; the original of my notice, motion, proposed order, and declaration in support of my motion for extension of time for service pursuant to Rule 4(m); to the Clerk, US Dist. Ct. - NDCA at US Courthouse 450 Golden Gate Avenue San Francisco, CA 94102-3489

To my knowledge, Defendant has not yet appeared in this action.

I hereby invoke the prison mailbox rule.

I declare under penalty of perjury that the foregoing statements made by me are true and accurate.

Executed this 24 Day of DECEMBER, 2024



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